

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO: 04-20834-CIV-GOLD/TURNOFF**

**WACHOVIA BANK, NATIONAL  
ASSOCIATION, formerly known  
as FIRST UNION NATIONAL BANK,  
a national association,**

**Plaintiff,**

**vs.**

**DR. PAUL TIEN, MING TIEN, HENRY TIEN,  
THE AMERICAN UNIVERSITY OF  
THE CARIBBEAN N.V., et al.,**

**Defendants.** \_\_\_\_\_/

**INTERIM ORDER REGARDING OWNERSHIP OF ACCOUNTS;  
FINDINGS OF FACT AND CONCLUSIONS OF  
LAW FOLLOWING BENCH TRIAL PURSUANT TO RULE 52(a);**

**THIS MATTER** came before the Court following a bench trial which commenced on July 23, 2007. At the trial, the Court heard from the following witnesses: Dr. Paul S. Tien (by deposition), Henry Tien, Ming Tien, Yife Tien, Robert J. Sokol, Jeffrey Craig Froehle, C.P.A., Michael Paul Elkin, C.P.A., and Orin Connor Ward, Pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, the Court enters by this Order the following Findings of Fact and Conclusions of Law:

**I. Procedural Background**

This is an action for interpleader pursuant to 28 U.S.C. § 1335 and Federal Rules of Civil Procedure Rule 22, and, alternatively, for declaratory relief pursuant to 28 U.S.C. § 2201 and Federal Rules of Civil Procedure Rule 57 commenced by Wachovia Bank, N.A.

("Wachovia") on April 9, 2004 in order to establish ownership of five bank accounts funds held on deposit in Wachovia. The first bank account is in the name of "American University of the Caribbean School of Medicine" or as referred to throughout this case, "AUC Cayman No. 2." It was account number 9981595648 and is now account number 9986157036. The second account was in the name of "American University of the Caribbean" or as referred to throughout the case, "AUC Cayman No. 1." It was account number, 2000015516189 and is now account number 2000016747892. The third account is titled in the name of "Medical Education Information Office, Inc., or, as referred to throughout the case, "MEIO." This account was account number 9980288176 and is now account number 9986157023, The fourth account is titled in the name "Southeastern Trust Company, Ltd." ("Southeaster Trust Company" or "SETC"). This account was number 2000015516163 and is now account number 2000016747902 ("The large SETC account."). The fifth account is titled in the name "Southeastern Trust Company, Ltd." This account was number 2000015516176 and is now account number 2000016774915 ("The small SETC account.).

The Cross-Defendants, which consist of members of the Tien family and the corporate entities that they each allegedly control, each have a different position as to who or which entity is entitled to the subject funds. The exception is Yife Tien who has made no claim to any of the funds. Cross-claimant, the American University of the Caribbean ("AUC Cayman No. 1") is a company organized and existing under the laws of the Cayman Islands, British West Indies, with its principal place of business in the Cayman Islands. Cross-claimant, American University of the Caribbean N.V., Inc. ("AUC, N.V.") is a

company organized and existed under the laws of the Netherlands Antilles, with its principal place of business on the island of Saint Maarten in the Netherlands Antilles. Cross-claimant, The American University of the Caribbean School of Medicine ("AUC Cayman No. 2") is a company organized and existed under the laws of the Cayman Islands, British West Indies, with its principal place of business in the Cayman Islands. The three foregoing companies are collectively sometimes referred to herein as "the AUC Companies." Cross-claimant, Medical Education Information Office, Inc., ("MEIO") is a company organized and existing under the laws of the State of Florida with its principal place of business in Coral Gables, Florida. The AUC Companies and MEIO claim to own all the funds and contend that Henry and Ming Tien have no claim to the monies in question. On the other hand, Cross-Defendants Henry and Ming Tien claim that they are the rightful owners of at least a portion, if not all, of the subject funds.<sup>1</sup>

To summarize, the various entities' accounts which are in dispute among the

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<sup>1</sup> While the current parties to this suit are the AUC Companies, MEIO, and Yife Tien on one side and Henry and Ming Tien on the other, this suit has had several parties which have been either been dismissed or have disavowed ownership of the monies in question. First, Dr. Paul S. Tien was originally a party to this suit. In a Motion to Dismiss, Dr. Paul S. Tien argued that he was not an adverse party because he disavowed any personal claim in the accounts held by Wachovia. **[DE #129]**. In the Declaration in support of his Motion to Dismiss, Dr. Paul S. Tien stated: "[m]oreover, I do not assert any direct, personal claim to any of the funds at issue at Wachovia. I believe that the funds are all corporate funds owned as described below." In light of these representations, I dismissed Dr. Paul S. Tien as a party on September 30, 2005. **[DE # 331]**. The Turks and Caicos Government was added as party to this suit in April 9, 2005, one year after the commencement of this litigation. **[DE # 220]**. The Turks and Caicos Government was an active party to this suit until early 2007 when it filed a Stipulation of Dismissal. Thereafter, the Turks and Caicos Government was dismissed as a party. **[DE # 680]**. Yife Tien, who is a party, to this suit makes no personal claim to any of the funds in question. **[DE # 420]**. Wachovia, N.A., which brought this matter, was dismissed after it reached an unopposed Notice compromising claims. **[DE # 441]**.

various entities and individuals is provided below:

1. Southeastern Trust Company LTD:

a. Account #2000016747902, balance as of January 26, 2004 \$61,073,642.23 (old account #2000015516163);

b. Account #2000016747915, balance as of January 26, 2004 \$2,404,857.78 (old account # 20000155116176);

2. American University of Caribbean:

a. Account # 9986157036, balance as of January 26, 2004 \$3,866,555.05 (old account #9981595648 American University of the Caribbean School of Medicine account overdraft position of -\$365.17);

b. Account # 200001674747892, balance as of January 26, 2004 \$23,572,694.46 (old account 2000015516189); and

3. Medical Education Information Office:

a. Account #9980288176, balance as of January 26, 2004 \$313, 873.71;

b. New account opened by Mr. Yife Tien 9986157023, balance as of January 26, 2004 \$790.00.<sup>2</sup>

On March 28, 2006, the AUC Companies and MEIO filed Cross-Claims against Henry and Ming Tien. **[DE # 420]**. On May 8, 2006, Henry and Ming Tien filed their Amended Answer, Defenses, and Affirmative Defenses to the Cross-Claim. **[DE # 440]**.

In their Defenses and Affirmative Defenses, Henry and Ming Tien stated:

4. Henry Tien is the legal and equitable owner of at least 25% of the funds at issue and the entire AUC enterprise.
5. Ming Tien is the legal and equitable owner of at least 25% of the funds at issue and the entire AUC enterprise.

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<sup>2</sup> These balances are as of the date of the filing of this action. The balances are currently different which reflect the accrual of interest since the filing of this suit.

6. The funds at issue belong to owners of the AUC enterprise, not Cross-Plaintiffs and/or any AUC-related corporate entities.
7. Cross-Plaintiffs' claims are barred by the doctrine of unclean hands.
8. Cross-Plaintiffs do not have the authority to bring forward the Crossclaim and have no rights to, or interests in, the funds at issue.
9. Regardless of how the AUC enterprise was structured on paper, all members of the Tien family always agreed and understood that each family member owned 25% of the AUC enterprise and its profits.

It is undisputed that Henry and Ming Tien never filed an affirmative Cross-Claim against the AUC Companies, MEIO, and Yife Tien.

On January 24, 2005, the AUC Companies, MEIO, and Yife Tien filed a Motion for Summary Judgment. **[DE # 143]**. In this Motion, the AUC Companies, MEIO, and Yife Tien argued that there were no genuine issues of material fact in dispute and argued that Henry and Ming Tien have no interest in the monies. In their Supplemental Motion for Summary Judge filed on August 22, 2006, the AUC Companies, MEIO, and Yife Tien argued that the evidence obtained in discovery provides a clear answer as to owns the money in controversy. **[DE # 526]**. Additionally in their Motion for Summary Judgment, the AUC Companies, MEIO, and Yife Tien argued that even if the Court were to credit Henry and Ming Tien's theory of the case, then Henry and Ming Tien would not be entitled to any more than fifty percent of the assets in controversy. In Response, Henry and Ming Tien argued that the Southeastern Trust Company is an "unincorporated association," composed of the four family members, Paul, Ming, Yife, and Henry Tien, and that the monies held in the name of the Southeastern Trust Company in the Wachovia accounts belongs equally to the four of them. **[DE # 552]**. To support this proposition, Henry Tien

submitted a Declaration. **[DE # 549]**. Additionally, Henry Tien stated at the video-taped deposition that each of the family members were each entitled to twenty-five percent of all of the assets in question. **[DE # 520]**. At the oral argument held on October 27, 2006, counsel for Henry and Ming stated that under their theory of the case the four Tien family members, Paul, Ming, Yife, and Henry were each entitled to twenty-five percent of the assets in this case. Because under such a theory, it would appear that Henry and Ming Tien would have no claim to at least fifty percent of the assets in controversy, I permitted Supplemental Briefing on this issue. **[DE # 588 & 593]** In the Supplemental Briefing, Henry and Ming contended that a significant issue of fact remained regarding their entitlement to all the monies based on other claims. By Order dated December 5, 2006, I denied the AUC Companies, MEIO, and Yife Tien's Preliminary and Supplemental Motion for Summary Judgment. **[DE # 601]**. In relevant part, the Order denying the AUC Companies, MEIO, and Yife Tien's Motion for Summary Judgment, stated:

I conclude that there are genuine issues of material fact which preclude summary judgment and require resolution at trial. In so ruling, I make no comment on the merit, or lack of merit, of any of the arguments. Accordingly, the AUC Companies, MEIO, and Yife Tien's dispositive Summary Judgment against Henry and Ming Tien **[DE # 143]**, as well as their Supplemental Motion for Summary Judgment, **[DE # 526]** are both DENIED in their entirety.

**[Omnibus Order, p. 12-13].<sup>3</sup>** By separate order, I directed that the AUC Companies and

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<sup>3</sup> The decision to deny AUC Companies, MEIO, and Yife Tien's Motion for Summary Judgment was also based partly on the fact that this Court could not render credibility determinations with regard to the candor and truthfulness of the parties via a Motion for Summary Judgment.

MEIO's Cross-Claim against Henry and Ming Tien would proceed with a jury trial. **[DE # 600]**.

After the issuance of the Omnibus Order in December 2006, Henry and Ming Tien's local counsel, the firm of Herron, Jacobs, & Oritz, filed a Motion to Withdraw as local counsel.<sup>4</sup> Upon consent of Henry and Ming Tien, I granted the motion. A new local counsel, Roger Slate and the law firm of Pathman Lewis, commenced representation of Henry and Ming Tien in March 2007. **[DE # 646]**. Paul A. Batista, Esquire, continued as lead counsel.

In March 2007 after almost three years of litigation, the AUC Companies, MEIO, and Yife Tien filed a "Motion to Direct Henry and Tien to Interpose a Cross-Claim" **[DE # 647]** to address the fact that Henry and Ming Tien never interposed an affirmative Cross-Claim to the funds at issue here. After a hearing in June 2006, Henry and Ming Tien were permitted to file what otherwise would have been an untimely Cross-Claim. **[DE # 695]** However, the scope of the Cross-Claim was restricted to the pleadings of record. Thereafter, Henry and Ming Tien attempted to file an overly-broad Cross-Claim which added new damage theories and claims as well as attempted to amend almost all previously submitted pleadings a month before trial. **[DE # 703]**. I struck this pleading.<sup>5</sup>

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<sup>4</sup>On February 16, 2007, the AUC Companies, MEIO, and Yife Tien filed a "Motion to Dismiss Ming Tien's Claims for Fraud on the Court." **[DE # 630]**. In the Motion, the AUC Companies, MEIO, and Yife Tien argue that Ming Tien should be sanctioned because she has presented inconsistent positions to this Court and the state court which is presiding over her dissolution of marriage case. At the July 3, 2007, I informed the parties that I would reserve hearing this Motion until after the trial.

<sup>5</sup> In response to the filing of an over-broad Cross-Claim, I levied sanctions against Henry and Ming Tien and I directed the AUC Companies, MEIO, and Yife Tien to file a

**[DE # 721].** However, Henry and Ming Tien were permitted a final opportunity to file a Cross-Claim. It is undisputed that Henry and Ming Tien never filed a timely affirmative Cross-Claim to the monies in question, despite being given several opportunities to do so.

Instead, in June and July of 2007, a flurry of activity occurred as this matter approached its preset trial date. First, Henry and Ming Tien withdrew their long standing demand for a jury trial and the AUC Companies, MEIO, and Yife Tien did not oppose this withdrawal. **[DE # 717 & 718].**

Second, after I struck the over-broad Cross-Claim, Henry and Ming Tien's attorneys drafted a series of Motions to Withdraw. Their first motion to withdraw was filed by both their lead counsel, Paul Batista, Esq., and their local counsel, Roger Slade, claiming irreconcilable differences with Henry Tien. **[DE # 722 & 723]** In an Order dated June 21, 2007, I denied the first round of Motions to Withdraw **[DE # 729]**. Among other reasons, I concluded that the grounds provided by Attorneys Batista and Slade were merely permissive grounds for their withdrawal at the eleventh hour of this litigation. Before the ink was dry on the Order denying the first round of Motions to Withdraw, both Mr. Batista and Mr. Slade filed a second round of Motions to Withdraw citing allegedly mandatory grounds for their withdrawal. **[DE # 738 & 751]**. As part of his Motion to Withdraw as Attorney, Mr. Batista withdrew all submissions he filed on behalf of Henry and Ming Tien, including the Answer and Affirmative Defenses to the AUC Companies, MEIO, and Yife

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memorandum outlining their costs and attorneys' fees incurred in preparing their Motion to Strike. On June 22, 2007, the AUC Companies, MEIO, and Yife Tien filed a Memorandum outlining their costs and attorneys fees, which totaled \$13,808.35.

Tien's Cross-Claim he filed on their behalf. In his Motion, Attorney Batista explained that he did so to avoid Rule 11 sanctions against himself personally.<sup>6</sup> At oral argument held on July 3, 2007, Mr. Batista again reiterated that he intended to withdraw all pleadings that he filed on behalf of Henry and Ming Tien. Both Henry and Ming, however, expressed their desire to proceed to trial with Mr. Batista and Mr. Slade.

In response to the actions of Attorney Batista, the AUC Companies, MEIO, and Yife Tien presented the Court with a series of Motions for Summary Judgment and/or a Motion for Judgment on the Pleadings in July 2007. The first of these Motions was presented as an *ore tenus* Motion for Summary Judgment at the July 3, 2007 Pre-Trial Conference, which I denied from the bench. Thereafter, the AUC Companies, MEIO, and Yife Tien filed a Renewed Motion for Summary Judgment and/or Motion for Judgment on the Pleadings. **[DE # 758].**<sup>7</sup> In this Motion, the AUC Companies, MEIO, and Yife Tien argued that Attorney Batista's withdrawal of the pleadings he signed on behalf of Henry and Ming Tien to avoid Rule 11 sanctions left Henry and Ming Tien in default. Among other reasons, I denied the AUC Companies, MEIO, and Yife Tien's Motions because questions of material fact were in dispute on the very face of their own pleadings and Motions which precluded awarding summary judgment. In an Omnibus Order dated July 16, 2007, I denied both of

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<sup>6</sup> As an attachment to his Motion to Withdraw as counsel, Attorney Batista filed a copy of unfiled Motion for Rule 11 sanctions that was served on him by the AUC Companies, MEIO, and Yife Tien.

<sup>7</sup> AUC Companies, MEIO, and Yife Tien also included a request for leave to file an interlocutory appeal of the denial of their Motion for Summary Judgment. In the Omnibus Order dated July 19, 2007, I also denied this request in the Omnibus Order dated July 19, 2007.

these Motions. **[DE # 762]**. However, I allowed Attorney Batista to withdraw his certification of the pleadings he filed on behalf of Henry and Ming Tien for the sole purpose of avoiding Rule 11 sanctions.

Partly in response to my July 16, 2007 Order, Henry and Ming Tien's local counsel, Roger Slade and the firm of Pathman Lewis, also withdrew their certifications of pleadings filed on Henry and Ming Tien's behalf in order to avoid the imposition of Rule 11 sanctions. **[DE # 763]**. Thereafter, the AUC Companies, MEIO, and Yife Tien filed yet another Motion for Summary Judgment, arguing again that Henry and Ming Tien were in default. **[DE # 764]**. On July 19, 2007, I denied the AUC Companies, MEIO, and Yife Tien's Renewed Motion for Summary Judgment concluding that questions of material fact exist on in the record as to who owned each of the accounts at issue **[DE # 765]**. Thereafter, this matter proceed to a trial.

## **II. Findings of Fact**

1. The founder of the American University of the Carribean Medical School was Dr. Paul Tien. Dr. Tien was born in Tiantin, China. He relocated to Taiwan and married Ming Tien. While in Taiwan, he received training in electronic engineering and served in the Air Force. He eventually moved to the United States in 1964 with his wife Ming and their two sons, Henry and Yife. While in the United States, he continued his studies in electrical engineering and eventually obtained two Masters degrees and a Doctorate degree. He eventually taught as a professor, became the Dean of the Department of Electrical Engineering at Belmont Technical College in Ohio and, in 1975, became President of Belmont Technical College. During this time, Ming Tien worked in an electronics company

in Cincinnati, Ohio.

2. In 1978, Yife Tien was a medical student in the Dominican Republic. Upon visiting Yife, Paul Tien decided to start an English speaking medical school in the Caribbean to primarily teach United States students. At that time, Henry Tien was attending the University of Cincinnati and studying premedical courses. Ming was still working at the electronics factory. After several unsuccessful attempts to discuss the medical school concept with various Caribbean Island governments, Dr. Tien reached an agreement with the government of Montserrat to build a new medical school on that island. Notwithstanding that Dr. Tien had little money at the time, he negotiated a long term lease of property and an agreement to construct a medical campus with a minimal investment on his part. In 1978, he formed a not-for-profit company in Montserrat in the name of the American University of the Caribbean at Montserrat ("AUC Montserrat"). While construction was ongoing, Dr. Tien arranged for the medical school classes to begin on August 14, 1978 at Mount St. Joseph's College located in Cincinnati, Ohio, with the understanding that the medical school classes would be relocated to Montserrat by January, 1980. Yife helped recruit the first year class from students attending medical school in the Dominican Republic. At this time, both sons were in their twenties. AUC Montserrat makes no claim to any of the monies in this case and is not a party to these proceedings.

3. In 1980, the medical school began classes in Montserrat. It was profitable from the beginning. Dr. Tien was President. He relocated permanently to Montserrat. None of the other family members worked at the school at that time. They continued to live in Ohio.

4. On December 30, 1982, Dr. Tien incorporated a "for profit" company known as the "American University of the Caribbean," a Cayman Islands, British West Indies company, which bought the school from AUC Montserrat. The family referred to this company as "AUC Cayman No. 1". While Ming and Henry dispute the distribution of shares, the clear and convincing evidence support that Dr. Tien arranged for a distribution of 40 shares of the AUC Cayman # 1 to himself and gifted 20 shares to Ming, Henry and Yife respectively. As discussed below, Ming later transferred her shares to Dr. Tien. Yife's shares were redeemed by the company for approximately \$1,500,000.00. Reflecting the redemption of Yife's shares, Dr. Tien now owns 75% of the outstanding shares in the company (i.e. 60 shares out of 80 total), and Henry owns the other 25% (i.e. 20 shares out of the total. Neither Henry nor Ming were directors of Cayman No. 1. By their respective tax filings with the IRS, each of member of the Tien family declared, under penalty of perjury, their respective ownership of the shares of AOC Cayman No.1 consistent with the above findings.

5. In 1983, the Ming, Henry and Yife moved to Miami, Florida.

6. On May 12, 1983, Dr. Tien formed a Florida corporation known as Medical Education Information Office, Inc. ("MEIO") for the purpose of rendering administrative services to the medical school. Its earnings were predicated on a percentage formula associated with revenues of the medical school. Both Henry and Yife worked for MEIO. Yife managed the office and was in charge of recruiting. Henry was in charge of financial affairs. Ming performed limited clerical functions. Originally, 1000 shares were divided equally among the family members. Each family member held 250 shares. As a result of

later stock transfers by Paul Tien, the stock in MEIO is now held by Henry (375 shares), Yife (375 shares), and Ming (275 shares). Dr. Tien no longer holds any shares. On September 12, 1994, MEIO opened an account at Wachovia's predecessor, First Union (number 9980288176). This is an account that is subject to the Interpleader.

7. In 1995, there was a volcanic eruption on Montserrat and the medical school was destroyed. Prior to that time, Dr. Tien arranged for the purchase of real property on the island of St. Maarten. He decided to build a new medical school campus on that island. In 1996, he incorporated the American University of the Caribbean School of Medicine, a Cayman Islands, British West Indies company known as "AUC Cayman No. 2" or "AUCSOM." AUC Cayman No. 2 was the holding company for American University of the Caribbean N.V., a St. Maarten, Netherlands Antilles company incorporated in 1999 (known as "AUC N.V.") which was formed to operate the new medical school and to provide to qualified students the education and training required for a medical degree. All of the shares of stock of AUC N.V. were held by AUC Cayman No. 2. Dr. Tien was (and remains) the sole shareholder of AUC Cayman No. 2. This fact was known by all family members. Dr. Tien served as both President ("Chancellor") and Director of AUC No. 2. Yife Tien was also a director and served as Vice-President and Assistant Secretary. Neither Henry or Ming held an office or any stock with either company. The managing directors of AUC N.V. included a distinguished board including Robert Chertok, Robert Sokol, Francis Marsh, and Jeffrey Hamblin. AUC N.V. is the actual operating company of the medical school. There is an operating agreement between AUC N.V. and AUC Cayman No. 2 whereby AUC N.V. operates the school owned by AUC Cayman No. 2.

8. In June, 1995, AUC Cayman No. 1 made distributions to each of the shareholders. Paul received \$3,256,000.00, and Ming, Henry and Yife each received \$1,654,000.00. Ming's check was endorsed and deposited into Paul's Tien's account at First Union. The distributions nearly matched the percentage holding of each shareholder.

9. In 1995, Dr. Tien renounced his American citizenship.

10. In 1995, he transferred all of his shares in MEIO in equal distributions to Henry and Yife.

11. On June 1, 1995, Ming transferred her 20 shares of stock in AUC Cayman No. 1 to Dr. Paul Tien in a tax-free gift.

12. On June 12, 1996, Dr. Paul Tien opened First Union account number 9981595648 in the name of "American University of the Caribbean School of Medicine Cayman No. 2." Dr. Tien was the sole signatory on the account. By virtue of a Power of Attorney, however, he gave signatory power over this account to Ming Tien, Henry Tien, and Yife Tien. Thereafter, a certificate of deposit was opened in the name of "American University of the Caribbean." The signatories on the certificate of deposit were Dr. Paul Tien, Henry Tien, and Ming Tien.

13. In October 1996, Henry Tien submitted Form 5471's to the IRS for tax year 1995 in which each Tien family member acknowledged the new allocation of share ownership in AUC Cayman No. 1. On schedule O, Ming acknowledged her gift of 20 shares of AUC Cayman No. 1 stock to Dr. Tien.

14. On February 19, 1999, AUC N.V. was formed as a Netherlands Antilles company, and at some time thereafter took over the operation of the school from AUC

Cayman No. 2.

15. The medical school grew into a thriving educational institution on St. Maarten, with three incoming classes per year collectively representing 300 students, over 3,500 alumni, and a worldwide faculty of about 1,000 basic science educators and clinical practitioners, employed on a full and part-time basis.

16. Because a large percentage of American students received Government student loans, audit reports had to be provided to the United States Department of Education. Henry, as financial administrator, worked closely with the auditor for the AUC entities from 1996 forwards in compiling the consolidated financial statements. The audits were prepared by Jeffery Froehle of Froehle & Company, Certified Public Accountants. The audits began in 1995. The audits disclosed that the common stock of AUC N.V. was held by AUC Cayman No. 2 which in turn was owned by Dr. Paul Tien as the sole shareholder.

17. The first audit showing a stockholder distribution from net earnings in AUC Cayman No. 2 occurred in 2000 in the amount of \$33 million dollars. The audit for the year 2001 showed a stockholder distribution in the amount of \$7,982,831.00. The audit for the year 2002 showed a stockholder distribution in the amount of \$4,300,000. The audit for the year 2003 showed a stockholder distribution in the amount of \$12 million dollars.

18. Mr. Froehle never discussed these distributions with Dr. Paul Tien. He never reviewed, nor did he see, any supporting paperwork of any kind associated with these distributions. He simply was told by Henry, as the financial officer, that the distributions were made to his father at his father's request. Mr. Froehle characterized these arrangements, which lacked supportive documentation, as "very unusual." The audits also

reflect that AUC Cayman No. 2 held a number of significant investments in securities during those years.

19. On May 5, 1995, Dr. Tien wrote to Yife and Henry regarding their duties and responsibilities. He stated: "In an effort to improve administrative efficiency of the University and to avoid personal conflict and internal frictions, I am hereby assigning duties and responsibilities to each individual ...." He then assigned specific duties of administration to Yife and financial duties to Henry.

20. On October 18, 1999, because of growing tensions between Henry and Yife, Dr. Tien prepared a memorandum giving specific job assignments to his sons. Exhibit 515. Pursuant to the memorandum, he required that: "(2) [T]he information of all bank accounts and investments including account numbers, addresses, assets and contact persons should be kept in my office in St. Maarten." He also stated: "(3) For all companies, American University of the Caribbean School of Medicine LTD, American University of the Caribbean N.V., American University of the Caribbean LTD and MEIO, INC., **I am the only one authorized to sign all banking transfers, withdrawals and transactions. In my absence due to illness or death, any of the following combinations of signatures are required for banking transfers, withdrawals and transactions: (a) Yife Tien and Henry C. Tien, or (b) Yife Tien and Ming C. Tien, or (c) Henry C. Tien and Ming C. Tien).**" (Emphasis added).

21. It is undisputed that the family members absolutely trusted Henry regarding all financial matters until issues arose during the year 2003. It was the custom and practice of the family members, including Dr. Paul Tien and Yife, to sign financial documents "in

blank” that were prepared by Henry without reading them or question Henry about them. This included blank authorization or signature cards from financial institutions.<sup>8</sup> Prior to 2003, neither Dr. Tien or Yife carefully reviewed the audited financial reports prepared by Froehle & Company for AUC Cayman No. 2 and AUC N.V. which were provided to the United States Department of Education. When Yife eventually saw the audit reports in 2003, he assumed that “distributions to shareholders” reflected in the reports were made to his father. He did not discuss these matters with his father at the time.

22. On November 23, 1999, Dr. Tien wrote another memorandum concerning the operation of AUC and MEIO:

Since I founded the American University of the Caribbean (AUC) 21 years ago, the University has gone through very difficult times and has experienced so many unexpected problems and hardships. It was my determination, persistence, and hard working with your three family members' strong support and assistance, all problems and difficulties, which were happened in the past 21 years have been overcome and resolved. Today I feel very proud to see that AUC has become one of the most successful off-shore medical schools in the world. Unfortunately in recent years, Yife and Henry cannot work together as a team due to their very different views on managing certain areas. Therefore, few years ago, I assigned Yife to manage all the functions of the Medical Education Information Office (MEIO) in Miami including clinical duties and I assigned Henry to be in charge of the University's financial matters. Both Yife and Henry report to me directly and must work only on their own assigned duties without interfering other persons jobs of responsibilities. If anyone finds other person's poor performance of jobs or mismanagement of his duties, for the University's interest, you should report the case to me immediately for

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<sup>8</sup>.Yife Tien testified: “That is my signature, but my position is it's quite possible Henry would give me a blank form and says, here, we need you to sign here. I would sign it without looking at the top, okay, and it could be blank because many time Wachovia Bank officer will give him blank forms to take home. Okay. Wachovia will give him blank forms to take home, special signature cards. He would have everybody sign it, and later he would just fill in the account title, whatever, you know, that needs to be filled in. I believe that's what happened.” Transcript, July 24, 2007, pages 140-141.

my information and attention. **Since I am the founder and sole owner of the University, I have the full authority to make decisions on all matters of operating the University.** Therefore, I reserve my right to change or cancel your assignment or duties anytime when I find your job performance being poor and unsatisfactory. You must always follow my directions and guidelines to do you job efficiently and effectively. **During my lifetime, I am the only one authorized to sign all banking transfers, withdrawals and transactions.... After my death, the ownership of the University's assets will be divided as follows: Ming C. Tien 25% ownership shares, Yife Tien 25% ownership shares, Henry C. Tien 25% ownership shares [and] Emerald Field Foundation 25% ownership shares."** Exhibit 516 (emphasis added)(corrections not made).

23. On June 24, 2000, Dr. Paul Tien wrote a memorandum to Ming, Yife and Henry concerning instructions on "AUC's profits." He stated, in part, "Since 1995, I have abolished offering shares to Ming C. Tien, Yife Tien and Henry C. Tien. I am the sole owner of AUC." Exhibit 100.

24. In the course of the year 2003, the Board of Directors of AUC N.V. increasingly had concerns about Henry's lack of communication concerning financial matters, and his failure to comply with the Board's directives to provide financial information. It, therefore, convened an informal meeting with him on October 24, 2003, followed by a formal Board meeting on October 25, 2003. The unanimous conclusion of the Board was that Henry was exhibiting extremely bizarre behavior and could not be trusted to continue to discharge the responsibilities to manage the Medical School's finances.

25. In late 2003, Dr. Paul Tien first learned that Henry had made transfers of his money and money from the operating accounts of AUC Cayman No. 2 without his permission or approval, and contrary to his explicit direction. As discussed below in more detail, monies were transferred to an entity known as "Southeastern Trust Company, Ltd."

Dr. Tien had no knowledge that any funds were placed into that account by Henry at the time of the transfers. Likewise, neither Yife and the Board of Directors knew about the distribution or the placement of funds in the SETC accounts.

26. On December 1, 2003, Dr. Tien requested Henry to provide him with "... the last monthly bank statements for all banking accounts for all of the companies such as AUC School of Medicine, AUC NV, AUC Montserrat (non-profit), AUC Cayman # 1 (operated while we were in Montserrat), and my personal account to which funds were distributed to me (as shareholder for AUSOM) during the past three years." He further stated that "Regarding the Southeastern Trust Company bank account, I want to know which companies are these for? I am waiting for your immediate response." Exhibit 162.

27. On the same day, Henry replied by fax "to Father" in a cover note attaching a series of bank statements separated by captioned dividers. The cover note stated: "I have circled ending balances on the bank statements. The Southeastern Trust Company's funds are your distributions from AUCC-Cayman # 2 since 1995."

28. Henry failed to disclose in the fax the fact that \$12 million had been removed from the AUC Cayman No. 2 account and deposited in the AUC Cayman No. 1 account, and had only twelve days earlier been routed to the "large" Southeastern Trust account.

29. On December 15, 2003, Henry was fired by his father, upon recommendation of the Board of Directors, as financial controller. He was removed from continuing any involvement in the finances or management of the medical school. He was directed to turn over the corporate documents and day-to-day control of MEIO and all other medical school affairs to Yife.

*The "Southeastern Trust Company Limited Accounts"*

30. Prior to the year 2000, there were no accounts in the name of "Southeastern Trust Company, Ltd." located at Wachovia or at its predecessors. Nevertheless, in 2000, Henry Tien began to open accounts under the name of the defunct TCI company. In 1985, an entity known as "Southeastern Trust Company Limited" was formed upon advise of Dr. Tien's tax lawyers. The company or trust, as it was, was owned at the time by Dr. Tien. It originally was chartered in the Turks & Caicos Islands. During the 1980's, millions of dollars were placed into Southeastern Trust Company accounts. To Yife Tien's recollection, the money was held on behalf of AUC Cayman No. 1. However, Southeastern Trust Company, Ltd. was stricken off the corporate registered and ceased its corporate existence in 1988. For the years after, "Southeastern Trust Company Ltd." has been merely a fictitious name.

31. On November 26, 2000, Henry Tien appeared at First Union with two "Certified Corporate Resolution for Depository Authorization" [Exhibits 107 and 108]. The Corporate Resolutions represented that both were adopted at a duly held meeting at which a quorum was present. The Resolutions stated that the meeting was held on November 26, 2000 which was the same date on which Henry signed the Resolution at First Union. Both Resolutions listed Paul Tien as President, Ming Tien as Director, and Henry Tien as Secretary. The signatures of Paul Tien, Ming Tien and Henry Tien were affixed. Both Resolutions stated that only one signature of the three family members was required to deposit and remove funds. Based on the preponderance of the more credible evidence, I conclude that no such meeting was held; that Paul Tien had affixed his signature at